



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING
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**HOWARD COUNTY AGRICULTURAL LAND PRESERVATION BOARD
AND STATE AGRICULTURAL PRESERVATION ADVISORY BOARD**

May 27, 2015

Attendance:

Board Members: Lynn Moore, Chair
Rickey Bauer, Vice Chair
Jamie Brown
Mickey Day
Howie Feaga
Ann Jones

Public: Corey Blanton
Rosa Elena Cunningham
Luis V. Cunningham
Thomas V. Cunningham
Terri Geelhaar
Rob Geelhaar
Tim Keane
Rob Vogel
Natalie Ziegler
John Zirschky

Staff: Joy Levy, Administrator, Agricultural Land Preservation Program
Lisa O'Brien, Senior Assistant County Solicitor, Office of Law
Beth Burgess, Chief, Resource Conservation Division
Mary Smith, Secretary, Agricultural Land Preservation Program

Ms. Moore called the meeting to order at 7:05 p.m.

Action Items

- 1) **Minutes from the March 23, 2015** – Ms. Levy distributed the March minutes, apologizing that they are late. Ms. Moore called for a motion to approve the March minutes at the next meeting. Mr. Brown made the motion and Ms. Jones seconded it. The motion passed unanimously.
- 2) **Request for Recommendation on Easement Acquisition; Trust FBO of Thomas Lee Carroll, et al property; 61.5 acres (ALPB)** - Ms. Levy read the staff report, noting that most of this 61.5 acre farm is tillable ground and is in a corn, wheat and soybean rotation. According to the Soil Conservation District (SCD), there is a current Soil Conservation and Water Quality Plan that is fully implemented. Ms. Levy noted that there is a very high concentration of preserved land immediately adjacent and within a mile of this property.

Ms. Levy pointed out that the scoring for the immediate adjacency item was calculated as if tonight's other applicant property is already preserved, giving both properties the benefit of coming in together. She noted that this was previously done for the three contiguous Pfefferkorn properties. Ms. Levy stated that the properties must move through the approval process together in order to receive the increased points. She stated that once the acquisition occurs on the other property, the subject farm will be 100% surrounded by other ag preservation land.

Ms. Levy recommended approval, stating that the applicant property meets all eligibility criteria for acquisition of an agricultural preservation easement.

Mr. Day moved to approve, which was seconded by Ms. Jones. Ms. Moore called for discussion. There being none, Ms. Moore called for vote. The motion passed unanimously with Mr. Bauer abstaining.

3) Request for Recommendation on Easement Acquisition, Ziegler Family Irrevocable Trust property. 50.1 acres (ALPB) – Ms. Levy read the staff report, noting that this property is entirely wooded with selective timbering. According to the SCD, there is a current Conservation Plan that is fully implemented. The property is immediately to the east of the property just approved, and Ms. Levy reiterated the adjacency scoring calculation as noted with the previous applicant.

Ms. Levy recommended approval, stating that the applicant property meets all eligibility criteria for acquisition of an agricultural preservation easement.

The Chair called for comments and questions.

Ms. Ziegler stated that she opted out of the Green Infrastructure Program because it would limit her ability to harvest the trees and manage the property how she might want to. She opined that since she is in the process of completing a Forestry Management Plan (FMP) that she should receive the full 50 points for the "Ownership and Operation" item on the score sheet. Although she recognized that a farm that is in crops is a much different and more intensive use of the land, she stated that between managing the invasives and the deer, she believes her efforts constitute an active operation and should be scored as such.

Ms. Levy stated that she awarded zero points for this category because the FMP is not complete, so even if one considers managing for invasives an operation, at this time there is nothing actively taking place.

There was discussion among the Board members as to how "managing" a farm should be defined and what level of involvement is necessary to be considered an active operation.

Mr. Feaga inquired as to why points weren't given for the woodland in the "Current Land Use" scoring item. Ms. Levy stated that the SCD has always scored based on percentage of cropland and pasture only and we need to be consistent, which Mr. Feaga questioned.

Mr. Day stated that the "Current Land Use" item raises the issue as to whether timbering is considered an agricultural activity, and noted that the USDA recognizes it as such.

Ms. Levy expressed her concern about making changes at this point to this item since we've been scoring so many others without counting woodland.

A long discussion followed about how to deal with both scoring sheet items.

Ms. Jones made a motion to approve the acquisition and to give the fifty points for the "Ownership and Operation" scoring item, based on the reasoning that this parcel and several of those surrounding it are essentially being managed as one by the same family.

Ms. Moore asked for a second. There was no second, so the motion died.

Mr. Brown stated his opinion that if there was a FMP in effect they should be given the points, but without it the points are unwarranted.

Ms. Moore suggested taking a closer look at the larger policy issues regarding woodland in some future program discussion.

Ms. Jones remade her motion, including the stipulation that a FMP must be in place by the time of settlement. Mr. Feaga seconded the motion.

Ms. Ziegler said she would be able to have the FMP completed prior to settlement.

Ms. Moore called for a vote. Mr. Feaga, Ms. Jones and Ms. Moore voted in favor. Mr. Day and Mr. Brown voted against. Mr. Bauer abstained. The motion carried.

4) Request for Approval, Location of Principal Dwelling; Mullinix property, HO-00-07-PPSD (1); 41 acres (ALPB) – Ms. Levy read the staff report, stating that the farm is on the market and is unimproved. The principal dwelling request is coming from Terri and Rob Geelhaar, prior to them putting in a contract to purchase the farm. The property is mostly wooded, with a relatively small section of tillable ground near Mullinix Mill Road that is currently in soybeans and farmed by Jeff Winkler.

Ms. Levy noted that according to 15.514(c)(3) of the Code, the Board reviews dwelling locations to ensure minimal disruption of the farming operation. The applicant appears to have met the criteria by locating the dwelling relatively close to the woods line. Ms. Levy referred to the various maps within the staff report, showing the approximate dwelling and access locations. She noted that the exact location of the dwelling will be in large part determined by the siting of a suitable perc. Ms. Geelhaar has indicated that she foresees that the northern portion of the tillable ground will continue to be farmed, so the house and its access out to Mullinix Mill Road won't cause too much disruption to the agricultural use of the property.

Ms. Levy stated that she recommends approval of the request to locate a landowner's dwelling subject to the condition that the applicant must obtain all appropriate county and state permits and approvals.

Mr. Day asked if there could be a tenant house on the property. Ms. Levy stated that the deed of easement grants only a principal dwelling on this parcel.

Ms. Moore inquired as to whether the southern portion of the property will be farmed. Ms. Geelhaar stated that if they decide to reestablish their equine operation, that is where the horses would be, but for now, they just want the northern portion in crops.

There was discussion about the access and its potential impact. There was also a lot of discussion about various other driveways that appear to cut across this property.

Ms. Moore called for a motion. Mr. Feaga moved to accept staff's recommendation, which was seconded by Mr. Brown. Mr. Brown, Mr. Feaga and Mr. Day voted in favor. Ms. Jones and Mr. Bauer voted against. The motion carried.

5) Request for Approval, Release of Three Unrestricted Lots, Exchange of Land Under Easement for Land Not Under Easement and Location of Tenant House; Gratia Plena, LLC property; 162.07 acres (ALPB) – Ms. Levy read the staff report, stating that Gratia Plena, LLC is the owner of this 162 acre farm located on the west side of Sheppard Lane, represented by Mr. Cunningham and his engineering and development team. Ms. Levy noted that there are three different aspects to Mr. Cunningham's request that require Board approval. Ms. Levy stated that in addition to information regarding the requests, she included in her staff report Mr. Cunningham's overall plan for the property, which partially includes its use as a food hub. She noted that this is a zoning matter, but that information regarding his larger vision would assist the Board when reviewing the requests

before them, especially the tenant house. In reading the staff report, Ms. Levy listed all of the livestock already on the property, and Mr. Cunningham's plans for additional animals. He has been conducting regular visits to other local farms to discuss selling their products through his food hub.

Ms. Levy said the Board will review the location of three unrestricted lots, an exchange of unencumbered land for encumbered land, and the re-designation of an existing principal dwelling to a tenant house and the building of a new principal dwelling. She indicated that she would explain all of the requests first and then the Board could go back and vote on each one individually.

Location of three unrestricted lots

Ms. Levy noted that the 162 acre property is entitled to three one-acre unrestricted lots. Ms. Levy referred to the aerial map, stating that the three lots are proposed to be clustered together and proximate to the Chapel Woods community, which is immediately adjacent to the south. The three unrestricted lots would take access from an existing driveway at the terminus of Chapel Estates Drive. Due to this access location, there will be very little disruption to the farming operation. Preliminary perc testing in this area looks promising.

Exchange of unencumbered land for encumbered land

Ms. Levy informed the Board that Section 15.515 of the Howard County Code provides for the exchange of easements in very limited circumstances and only when the ALPP will benefit from the exchange. In this case, there are three 3-acre lots along Sheppard Lane that are not under the easement that also belong to LLC's controlled by Mr. Cunningham. The proposal is to merge and encumber the approximately 9+ acres in exchange for releasing from the easement restrictions 3 acres to create three more 1-acre lots, which would be located proximate to the three unrestricted lots. Ms. Levy referred to the aerial map to help explain the proposal, stating that if approved, the ALPP will gain approximately 6 acres of good quality farmland, in accordance with the Code provision requiring a benefit to the Program.

Tenant House

Ms. Levy referred to the aerial map to illustrate the request to re-designate the existing principal dwelling as a tenant house and build a new principal dwelling. She noted that Section 15.514(c) of the Howard County Code provides for the approval of a tenant house, based on the Board's approval of the need for the tenant and the chosen location. In this case, since the existing house will be the tenant house, it is actually the new principal dwelling the Board will be reviewing. Ms. Levy stated that based on the information provided, Mr. Cunningham will have a rather extensive and varied farming operation, one that could justify a full time tenant residing on site.

Ms. Levy stated that the proposed location for the new principal dwelling is approximately 600 feet to the north of the existing dwelling. It would be sited on a knoll close to the edge of a woods line. According to the owner, the proposed new house will be designed, sited and constructed to minimize the loss of productive agricultural land.

Staff recommended approval of all three requests.

Ms. Jones moved to approve the three unrestricted lots. Mr. Feaga seconded the motion. Ms. Moore inquired about the placement of the lots and wondered why they couldn't be closer to the woods line. Mr. Vogel stated that they couldn't get percs there. Mr. Cunningham stated that the area between the lots and the woods will be used for pasture. Ms. Moore called for a vote. The motion carried unanimously.

Regarding the exchange of easements, Ms. O'Brien inquired as to the merging of the parcels and the consolidation of ownership, and the timing of the conveyance with respect to the amended deed of easement.

Ms. Jones moved to approve the exchange of easements, with the stipulation that the intended access from Chapel Estates Drive is, in fact, the access used. Mr. Feaga seconded the motion, requesting to add the stipulation that all of the parcels that will be under the easement will be merged and under one ownership prior to the deed of easement being amended. The motion was so amended. Ms. Moore called for a vote. The motion carried unanimously.

Mr. Feaga moved to approve the redesignation of the principal dwelling as a tenant house, and the location of a new principal dwelling. Mr. Day seconded the motion. Ms. Moore called for a vote. The motion carried unanimously.

6) Request for Recommendation on Easement Acquisition - Approval of Revised per Acre Price, Our Forsythe, LLC, 29.85 acres (ALPB) - Ms. Levy informed the Board that they need to review this application again because the property survey has been completed and there is a slight reduction in acreage. As a result there is a small reduction in the total price offer. Ms. Levy reviewed the amended score sheet and recommended approval.

Ms. Jones moved to approve the revised score sheet and Mr. Day seconded the motion. The motion carried unanimously.

Discussion Items

1) Program Updates – Ms. Levy gave an overall status of the various applicant properties and where they are in the process.

2) Review of current ALPP and discussion about ways to improve the program – There was discussion about the proposed changes to Section 15.518. Ms. Levy stated that Mr. Feaga was the only one who sent in comments, which Ms. Levy has since incorporated. Mr. Bauer stated his opinion that the ALPB should be able to serve as an expert panel for all farms, not just for those within the ALPP. The Board agreed, but there was question as to whether the Board has the authority to make recommendations or decisions about farms not in the Program. Ms. O'Brien stated that the legislative process required for Code changes will be the determining factor, but the Board should propose what they ideally want to see.

3) Meeting with County Executive Kittleman – Ms. Moore reported out on the meeting she and Mr. Feaga had with the County Executive that morning. She thought it went well and that he was receptive to their concerns about zoning complaints between neighbors, including the mulching situation. He also seemed to agree that it would be helpful to have the farmers on the Board serve as an expert panel on zoning issues and other complaint situations. She noted that they also discussed the definition of “commercial” as it pertains to the prohibition of certain uses, and how agriculture is by its nature a commercial use.

4) Need for Information for New Board Members – There was a discussion about the fact that new members receive no information about the workings of the Board, and what information would be helpful for new members to have. Staff agreed to put together a binder with various documents for all of the Board members and distribute that at the next meeting. Ms. Levy also noted that there is a lot of information about the ALPP on the County's web site.

5) Request from Kathy Zimmerman regarding Office of Emergency Management Mapping – Ms. Zimmerman is looking for various farmers to volunteer to have their farms mapped out for emergencies that show where chemicals are stored, animals are housed and various other aspects of the farm that might be important in an emergency situation. There was discussion about the value of this exercise and who the information that is gathered would be shared with.

Mr. Feaga moved to adjourn, which was seconded by Mr. Day. The motion passed unanimously.

The meeting adjourned at 10:00 PM

Joy Levy, Executive Secretary
Agricultural Land Preservation Board